

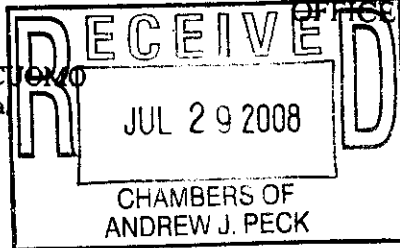


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DATE FILED: 7/29/08

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUNEO  
Attorney General



BY FAX

LESLIE G. LEACH  
Executive Deputy Attorney General  
Division of State Counsel

JUNE DUFFY  
Assistant Attorney General in Charge  
Litigation Bureau

MEMO ENDORSED

July 29, 2008

VIA FACSIMILE

Honorable Andrew J. Peck  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Walker v. Caban et al.  
Docket No.: 08-CV-3025

Dear Judge Peck:

The Office of the Attorney General of the State of New York represents the defendants, corrections officers J. Caban and G. Laverty, in the above-referenced matter. During our last appearance before the Court on July 3, 2008 for a discovery status conference, plaintiff Sherman Walker indicated that he would be serving Interrogatories upon defendants and responding to defendants' Interrogatories and Request for the Production of Documents. As of the date of this correspondence, my offices have not received a single letter, item of discovery or discovery request from plaintiff.

Since the Court has ordered all discovery to be completed by Thursday, July 31, 2008, plaintiff's delay can only be viewed as a complete failure to prosecute his claim requiring the immediate dismissal of his action. The defendants have been significantly prejudiced by plaintiff's failure to engage in meaningful discovery as it has directly affected their ability to plead and prove their defenses, as well as proceed with the deposition of plaintiff. In a good faith effort to resolve this dispute, the undersigned sent a letter to plaintiff via overnight mail on July 25, 2008 requesting compliance with plaintiff's outstanding discovery obligations, as well as rescheduling his deposition to July 31, 2008 in order to permit him the opportunity to comply. (Letter is annexed hereto) Plaintiff has not responded to the July 25, 2008 letter, or displayed any intention of prosecuting his case in good faith. While defendants remain ready to proceed with plaintiff's deposition on July 31, 2008 in order to comply with the Court's discovery deadline, plaintiff's failure to prosecute his case has resulted in significant prejudice to defendants' ability to conduct said deposition.

Hon. Andrew J. Peck  
United States District Judge

SO ORDERED:

Copy to Plaintiff  
Caban  
Laverty  
Peck

1. If plaintiff has not served any discovery  
he will get pretty hard deposition  
not 302 material.  
2. Defendants said they had a letter  
7/31. In handwriting to a judge at court  
if it turns out plaintiff has any documents that  
defendants do not have, they can be argued at the  
deposition.  
3. Court should not call for  
discovery at this point  
4. By the way, we are not the deposition  
to be served by the plaintiff.

Therefore, defendants request this Court to order plaintiff's compliance with outstanding discovery, including his responses to defendants' Interrogatories and Request for the Production of Documents. Moreover, defendants request that any witnesses plaintiff may seek to call at trial be precluded at this time, as the current discovery deadline does not allow for defendants to depose any witnesses plaintiff may now choose to identify. In the event plaintiff continues in his noncompliance, defendants request plaintiff's action be dismissed with prejudice for failure to prosecute.

Respectfully submitted,



CHRISTOPHER L. VAN DE WATER  
Assistant Attorney General

cc: Sherman Walker (via Overnight Mail)  
Pro Se Petitioner  
DIN #92-A-7141  
Bare Hill Correctional Facility  
Caller Box 20  
181 Brand Road  
Malone, New York 12953



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
Attorney General

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JUNE DUFFY  
Assistant Attorney General in Charge  
Litigation Bureau

July 25, 2008

**VIA OVERNIGHT MAIL**

Sherman Walker  
DIN #92-A-7141  
Bare Hill Correctional Facility  
Caller Box 20  
181 Brand Road  
Malone, New York 12953

Re: Walker v. Caban, et al.  
Docket No.: 08 Civ. 3025(JSR)(AJP)

Dear Mr. Walker:

Enclosed please find an Amended Notice of Deposition, as well as a copy of District Judge Rakoff's Rules. I will be forwarding to you shortly a copy of your medical records, disciplinary hearing transcript and supplemental responses to defendant's initial disclosures. As directed by Judge Peck during our last conference, you were to send me interrogatories as well as responses to defendants' interrogatories and document demands. To date, I have not received a single document, demand, or correspondence of any type from you. Under the Federal Rules of Evidence, if your non-compliance with discovery continues, you may be precluded from offering proof of your claim at the time of trial. Please immediately forward all relevant materials to my attention prior to your deposition, which, in light of your failure to cooperate, has been rescheduled to be held on July 31, 2008.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Van De Water".

Christopher L. Van De Water  
Assistant Attorney General

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** July 29, 2008

**Total Number of Pages:** 4

TO	FAX NUMBER
Christopher VanDeWater, Esq.	212-416-6009

## **TRANSCRIPTION:**

### **MEMO ENDORSED 7/29/08**

1. If plaintiff has not sought any discovery, he will get nothing besides defendants' Local Rule 33.2 material.
2. Defendants should depose plaintiff on or before 7/31. Interrogatories to a pro se are worthless. If it turns out plaintiff has any documents that defendants do not have, they can be copied at the deposition.
3. Counsel and Mr. Walker should discuss settlement at the deposition.
4. Any other relief necessary after the deposition can be applied for at that time.

**Copies to:** Sherman Walker (Mail)  
Judge Jed S. Rakoff